

must be paid an amount equal to the amount the MCO, PIHP, PAHP, or PCCM entity would pay a FQHC that is a network provider but is not an IHCP, including any supplemental payment from the State to make up the difference between the amount the MCO, PIHP, PAHP or PCCM entity pays and what the IHCP FQHC would have received under FFS.

(2) When an IHCP is not enrolled in Medicaid as a FQHC, regardless of whether it participates in the network of an MCO, PIHP, PAHP and PCCM entity or not, it has the right to receive its applicable encounter rate published annually in the FEDERAL REGISTER by the Indian Health Service, or in the absence of a published encounter rate, the amount it would receive if the services were provided under the State plan's FFS payment methodology.

(3) When the amount a IHCP receives from a MCO, PIHP, PAHP, or PCCM entity is less than the amount required by paragraph (c)(2) of this section, the State must make a supplemental payment to the IHCP to make up the difference between the amount the MCO, PIHP, PAHP, or PCCM entity pays and the amount the IHCP would have received under FFS or the applicable encounter rate.

(d) *Enrollment in IMCEs.* An IMCE may restrict its enrollment to Indians in the same manner as Indian Health Programs, as defined in 25 U.S.C. 1603(12), may restrict the delivery of services to Indians, without being in violation of the requirements in § 438.3(d).

Subpart B—State Responsibilities

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§ 438.50 State Plan requirements.

(a) *General rule.* A State plan that requires Medicaid beneficiaries to enroll in MCOs, PCCMs, or PCCM entities must comply with the provisions of this section, except when the State imposes the requirement—

(1) As part of a demonstration project under section 1115(a) of the Act; or

(2) Under a waiver granted under section 1915(b) of the Act.

(b) *State plan information.* The plan must specify—

(1) The types of entities with which the State contracts.

(2) The payment method it uses (for example, whether FFS or capitation).

(3) Whether it contracts on a comprehensive risk basis.

(4) The process the State uses to involve the public in both design and initial implementation of the managed care program and the methods it uses to ensure ongoing public involvement once the State plan has been implemented.

(c) *State plan assurances.* The plan must provide assurances that the State meets applicable requirements of the following statute and regulations:

(1) Section 1903(m) of the Act, for MCOs and MCO contracts.

(2) Section 1905(t) of the Act, for PCCMs and PCCM or PCCM entity contracts.

(3) Section 1932(a)(1)(A) of the Act, for the State's option to limit freedom of choice by requiring beneficiaries to receive their benefits through managed care entities.

(4) This part, for MCOs, PCCMs, and PCCM entities.

(5) Part 434 of this chapter, for all contracts.

(6) Section 438.4, for payments under any risk contracts, and § 447.362 of this chapter for payments under any nonrisk contracts.

(d) *Limitations on enrollment.* The State must provide assurances that, in implementing the State plan managed care option, it will not require the following groups to enroll in an MCO, PCCM or PCCM entity:

(1) Beneficiaries who are also eligible for Medicare.

(2) Indians as defined in § 438.14(a), except as permitted under § 438.14(d).

(3) Children under 19 years of age who are:

(i) Eligible for SSI under Title XVI;

(ii) Eligible under section 1902(e)(3) of the Act;

(iii) In foster care or other out-of-home placement;

(iv) Receiving foster care or adoption assistance; or

(v) Receiving services through a family-centered, community-based, coordinated care system that receives grant

funds under section 501(a)(1)(D) of Title V, and is defined by the State in terms of either program participation or special health care needs.

§ 438.52 Choice of MCOs, PIHPs, PAHPs, PCCMs, and PCCM entities.

(a) *General rule.* Except as specified in paragraphs (b) and (c) of this section, a State that requires Medicaid beneficiaries to:

(1) Enroll in an MCO, PIHP, or PAHP, must give those beneficiaries a choice of at least two MCOs, PIHPs, or PAHPs.

(2) Enroll in a primary care case management system, must give those beneficiaries a choice from at least two primary care case managers employed or contracted with the State.

(3) Enroll in a PCCM entity, may limit a beneficiary to a single PCCM entity. Beneficiaries must be permitted to choose from at least two primary care case managers employed by or contracted with the PCCM entity.

(b) *Exception for rural area residents.* (1) Under any managed care program authorized by any of the following, and subject to the requirements of paragraph (b)(2) of this section, a State may limit a rural area resident to a single MCO, PIHP, or PAHP:

(i) A State plan amendment under section 1932(a) of the Act.

(ii) A waiver under section 1115(a) of the Act.

(iii) A waiver under section 1915(b) of the Act.

(2) To comply with this paragraph (b), a State, must permit the beneficiary—

(i) To choose from at least two primary care providers; and

(ii) To obtain services from any other provider under any of the following circumstances:

(A) The service or type of provider (in terms of training, experience, and specialization) is not available within the MCO, PIHP, or PAHP network.

(B) The provider is not part of the network, but is the main source of a service to the beneficiary, provided that—

(1) The provider is given the opportunity to become a participating provider under the same requirements for participation in the MCO, PIHP, or

PAHP network as other network providers of that type.

(2) If the provider chooses not to join the network, or does not meet the necessary qualification requirements to join, the enrollee will be transitioned to a participating provider within 60 calendar days (after being given an opportunity to select a provider who participates).

(C) The only plan or provider available to the beneficiary does not, because of moral or religious objections, provide the service the enrollee seeks.

(D) The beneficiary's primary care provider or other provider determines that the beneficiary needs related services that would subject the beneficiary to unnecessary risk if received separately (for example, a cesarean section and a tubal ligation) and not all of the related services are available within the network.

(E) The State determines that other circumstances warrant out-of-network treatment.

(3) As used in this paragraph (b), "rural area" is any county designated as "micro," "rural," or "County with Extreme Access Considerations (CEAC)" in the Medicare Advantage Health Services Delivery (HSD) Reference file for the applicable calendar year.

(c) *Exception for certain health insuring organizations (HIOs).* The State may limit beneficiaries to a single HIO if—

(1) The HIO is one of those described in section 1932(a)(3)(C) of the Act; and

(2) The beneficiary who enrolls in the HIO has a choice of at least two primary care providers within the entity.

(d) *Limitations on changes between primary care providers.* For an enrollee of a single MCO, PIHP, PAHP, or HIO under paragraph (b) or (c) of this section, any limitation the State imposes on his or her freedom to change between primary care providers may be no more restrictive than the limitations on disenrollment under § 438.56(c).

§ 438.54 Managed care enrollment.

(a) *Applicability.* The provisions of this section apply to all Medicaid managed care programs which operate under any authority in the Act.

(b) *General rule.* The State must have an enrollment system for its managed